

D-15

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
LOS ANGELES SUPERIOR COURT

AUG 28 2008

REC'D

AUG 26 2008

BY JOHN A. CLARKE, CLERK
MICHELE GONZALEZ, DEPUTY

FLING WINDOW

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

HY CITE CORPORATION, a Wisconsin corporation, PETER O. JOHNSON JR., an individual, ERIK JOHNSON, an individual, JAMES D. MARTIN, an individual, and LAWRENCE SCHAUFF, an individual,

Defendants.

No. BC 396 948

FINAL JUDGMENT AND PERMANENT INJUNCTION

1 Plaintiff, the People of the State of California ("People" or "Plaintiff"), through its
2 attorney, Attorney General Edmund G. Brown Jr., by Deputy Attorney General Michele R. Van
3 Gelderen, and defendants Hy Cite Corporation ("Hy Cite"), Peter O. Johnson Jr., Erik Johnson,
4 James D. Martin and Lawrence Schauff ("Defendants"), personally and through their attorney
5 Martin S. Schenker, having stipulated to entry of this Final Judgment and Permanent Injunction
6 (hereinafter the "Judgment") without the taking of evidence, and without the Judgment
7 constituting evidence of or an admission by any party regarding any issue of fact or law alleged
8 in the complaint filed in this action, without any defendant admitting any liability, and with all
9 parties having waived their right to appeal, and good cause appearing:

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

11 1. This Court has jurisdiction over the allegations and subject matter of the People's
12 complaint filed in this action, and the parties thereto; venue is proper in this County; and this
13 Court has jurisdiction to enter this Judgment. Except for paragraphs 17-21 hereof, the provisions
14 of this Judgment shall apply to Peter O. Johnson, Jr., Erik Johnson, James D. Martin and
15 Lawrence Schauff only (a) while such individual is employed by, and with respect to, Hy Cite
16 Corporation, its assigns or successors (including through stock sale, merger, or sale of all or
17 substantially all assets of Hy Cite), and as to James D. Martin and Lawrence Schauff, only with
18 respect to those policies or operations with respect to which such individual has policy setting or
19 operational authority or responsibility, or (b) while such individual owns directly or indirectly,
20 individually or collectively with other personally named Defendants, in excess of 50% of the
21 ownership interests of, and with respect to, any Similar Business. The term "Similar Business"
22 means any legal entity, organization, partnership or sole proprietorship engaged in the business of
23 selling cookware, other kitchen products or water filters to consumers through direct sales
24 channels.

25 INJUNCTION

26 2. The injunctive provisions of this Judgment apply to Defendants, their officers,
27 directors, employees, agents and representatives, their assigns and successors (including through
28 stock sale, merger, or sale of all or substantially all assets of Hy Cite), and any and all persons who

2025 RELEASE UNDER E.O. 14176

1 are acting in concert or in participation with any of them who have actual or constructive knowledge
2 of this Judgment.

3 3. Nothing herein alters the requirements of federal or state law or, except as expressly
4 specified herein, the Final Judgment and Permanent Injunction entered on March 9, 2000, in the case
5 of *The People of the State of California v. Hy Cite Corporation, et al.*, San Francisco Superior Court
6 Case Number 301274, to the extent any of these offer greater protection to consumers.

7 4. Defendants, in connection with the sale or offering for sale of any cookware, other
8 kitchen products or water filters to consumers, are hereby permanently enjoined and restrained
9 pursuant to Business and Professions Code sections 17203 and 17535 from directly or indirectly
10 engaging in any of the following acts or practices in or from California:

11 A. Defendants shall not solicit (and shall require that Defendants' territory
12 directors, distributors, Joint Ventures and their respective salespeople not solicit) a sale or order for
13 sale of goods or services without clearly, affirmatively and expressly revealing at the time of the
14 initial contact with the prospective buyer, and before making any statement, except a greeting, or
15 asking the prospective buyer any other questions, that the purpose of the contact and any pre-sale
16 follow-up visit that may be scheduled is to effect a sale, by doing all of the following:

- 17 (1) Stating the identity of the person making the solicitation;
18 (2) Stating the trade name of the person represented by the person making
19 the solicitation; and
20 (3) Stating the kind of goods or services being offered for sale.

21 Paragraph A does not apply to initial contacts at a booth at a fair or other comparable
22 commercial venue open to the general public, where it is reasonably clear from the setting and
23 circumstances that the purpose of the presentation is to sell products. Nothing in Paragraph A is
24 intended to excuse compliance with Business and Professions Code section 17500.3 where that
25 section applies.

26 B. Defendants shall not state or imply (and shall require that Defendants'
27 territory directors, distributors, Joint Ventures and their respective salespeople not state or imply)
28

1 that the primary purpose of the contact is other than to sell Defendants' products, unless true and
2 not misleading. This includes, but is not limited to, the following:

3 (1) Stating or implying that the primary purpose of the contact is to
4 publicize or promote Defendants and/or their products; and

5 (2) Stating or implying that the primary purpose of the contact is to
6 solicit the consumer's opinion.

7 C. Defendants shall not offer (and shall require that Defendants' territory
8 directors, distributors, Joint Ventures and their respective salespeople not offer) entry into a
9 raffle, sweepstakes or any other contest to win a prize by chance ("contest") where such entry is
10 conditioned on the consumer's agreement to view a sales presentation for Defendants' products
11 (except where such raffle, sweepstakes or any other contest is conducted entirely during such
12 presentation). Nothing in this Paragraph C prohibits Defendants (or Defendants' territory
13 directors, distributors, Joint Ventures and their respective salespeople) from requiring a
14 consumer to appear at a particular location or to contact (by telephone, e-mail, mail or other
15 similar method of transmission) Defendants, Defendants' territory directors, distributors, Joint
16 Ventures and their respective salespeople, to be entered in or to obtain entry materials for a raffle,
17 sweepstakes or other contest provided that the requirement is clearly and conspicuously disclosed
18 at the time the consumer is first told about the raffle, sweepstakes or other contest; and, provided
19 that, when the customer is so required to appear at a particular location, as long as the consumer
20 arrives prior to the commencement of the event, the consumer is given the entry materials
21 immediately upon arrival at the location and is not required to view a sales presentation.

22 D. Defendants shall not state or imply (and shall require that Defendants'
23 territory directors, distributors, Joint Ventures and their respective salespeople not state or imply)
24 that a consumer has completed the required process to receive an incentive, including, but not
25 limited to a gift or entry into a raffle, sweepstakes or other contest, when, in fact, the consumer
26 has not completed that process.

27 E. Defendants shall not state or imply (and shall require that Defendants'
28 territory directors, distributors, Joint Ventures and their respective salespeople not state or imply)

00577161015

1 that the consumer has been selected to receive an incentive not generally available to others
2 unless the number of consumers selected has been significantly limited on criteria other than age
3 and employment status.

4 F. Defendants shall not fail to disclose (and shall require that Defendants'
5 territory directors, distributors, Joint Ventures and their respective salespeople not fail to
6 disclose), in a clear, conspicuous and unequivocal manner, on the front of any form offering an
7 incentive that the consumer may be contacted by a salesperson to view a sales presentation, if
8 that is in fact the case.

9 G. In the case of an in-home sales presentation, Defendants shall not fail to
10 give (and shall require that Defendants' territory directors, distributors, Joint Ventures and their
11 respective salespeople not fail to give) the consumer the offered incentive (except for closing
12 incentives, which may be given at any time, and referral incentives, which may be given at any
13 time after the commencement of the sales presentation for Defendants' products) immediately
14 upon arrival at the consumer's home and immediately after complying with the requirements of
15 Paragraph A above and, where applicable, the requirements of Business and Professions Code
16 section 17500.3.

17 H. In the case of an in-home sales presentation, Defendants shall not solicit
18 (and shall require that Defendants' territory directors, distributors, Joint Ventures and their
19 respective salespeople not solicit) a consumer to provide referrals, and shall not provide a referral
20 incentive before the commencement of the sales presentation for Defendants' products.
21 Defendants shall not misrepresent (and shall require that Defendants' territory directors,
22 distributors, Joint Ventures and their respective salespeople not misrepresent) to the consumer
23 any fact relating to the person who made the referral.

24 I. In the case of an in-home sales presentation, Defendants shall not remain
25 (and shall require that Defendants' territory directors, distributors, Joint Ventures and their
26 respective salespeople not remain) in the consumer's home for more than 120 minutes. This
27 provision shall not apply to in-home group dinner parties (akin to a TupperWare-type party) or
28 similar sales techniques.

1 including in cooking with no oil, less oil or less fat, or in implementing the waterless or
2 minimum moisture cooking method.

3 (4) making the claim, if true, that the reaction between cookware
4 surfaces and food can affect taste or other aesthetic aspects of food, so long as the statements do
5 not assert or imply that such materials or substances can affect health, except as authorized
6 pursuant to Paragraph 4(K)(1) above. In making this claim, Defendants, their territory directors,
7 distributors, Joint Ventures and their respective salespeople are not prohibited from providing the
8 consumer with reprints of materials from governmental or academic sources or from nationally
9 or regionally-distributed publications published by independent third parties, or from comparable
10 sources on the Internet published or posted by independent third parties, that mention the terms
11 "contaminants" or "leach" (or any other form of these words) in the context of the effect of
12 cookware surfaces on taste or other aesthetic aspects of food, provided that the consumer's
13 attention is not drawn to the terms "contaminants" or "leaching" (or any other form of these
14 words), either by the conduct of Defendants, their territory directors, distributors, Joint Ventures
15 or their respective salespeople, or by physical manipulation, alteration or annotation of the
16 document.

17 L. Defendants shall not state or imply (and shall require that Defendants'
18 territory directors, distributors, Joint Ventures and their respective salespeople not state or imply)
19 that Defendants' products are more hygienic or sanitary than competitors' cookware, unless at
20 the time such claim is made (1) it is true and not misleading; and (2) Defendants have
21 documentation in their possession which substantiates each such claim based on the results of
22 tests conducted by an independent third party in accordance with generally accepted scientific
23 testing procedures, or information that is otherwise of the type that the scientific community
24 would reasonably rely upon to substantiate such claims.

25 M. Defendants shall not state or imply (and shall require that Defendants'
26 territory directors, distributors, Joint Ventures and their respective salespeople not state or imply)
27 that Defendants' products are made with surgical stainless steel that is comparable to surgical
28 stainless steel used in medical procedures, unless such claim is true and not misleading. This

1 provision does not prohibit the claim, if accurate, that Defendants' products are made with
2 surgical stainless steel.

3 N. Defendants shall not conduct (and shall require that Defendants' territory
4 directors, distributors, Joint Ventures and their respective salespeople not conduct) any test
5 purporting to detect whether cookware may release or leach contaminants or other cookware
6 materials into food. This includes, but is not limited to, the "scrub" test (examining the material
7 released by scrubbing a cookware's surface and then pouring the material released into a
8 container) or the baking soda test (heating baking soda and water in the cookware).

9 Notwithstanding the foregoing, Defendants, Defendants' territory directors, distributors, Joint
10 Ventures and their respective salespeople are not prohibited from conducting a test by cooking
11 food in Defendants' cookware or other cookware to demonstrate or compare conditions such as
12 taste or other aesthetic aspects of food provided that Defendants, Defendants' territory directors,
13 distributors, Joint Ventures and their respective salespeople do not assert or imply that the taste
14 difference, if any, reflects a difference in health benefit or risk, except as authorized pursuant to
15 Paragraph 4(K)(1) above.

16 O. Defendants shall not state or imply (and shall require that Defendants'
17 territory directors, distributors, Joint Ventures and their respective salespeople not state or imply)
18 that using Defendants' products will result in savings on a consumer's food bill due to reduced
19 food shrinkage, including, but not limited to, stating or implying that Defendants' products allow
20 users to use less food to serve the same amount or more people, unless at the time each such
21 claim is made (1) it is true, material and not misleading, and (2) Defendants can substantiate each
22 such claim based on the results of tests conducted by an independent third party in accordance
23 with generally accepted scientific testing procedures, or information that is otherwise of the type
24 that the scientific community would reasonably rely upon to substantiate such claims.

25 P. Defendants shall not state or imply (and shall require that Defendants'
26 territory directors, distributors, Joint Ventures and their respective salespeople not state or imply)
27 that using Defendants' products will result in savings on a consumer's energy bill compared to
28 other stovetop methods of cooking due to reduced energy usage realized by a specific consumer

1 or consumers in general, unless at the time each such claim is made (1) it is true, material and not
2 misleading, and (2) Defendants can substantiate each such claim based on the results of tests
3 conducted by an independent third party in accordance with generally accepted scientific testing
4 procedures, or information that is otherwise of the type that the scientific community would
5 reasonably rely upon to substantiate such claims.

6 Q. Defendants shall not state or imply (and shall require that Defendants'
7 territory directors, distributors, Joint Ventures and their respective salespeople not state or imply)
8 that Defendants' products are sold direct to consumers with no middle man. Nothing herein is
9 intended to prohibit the claim, if true, that Defendants' products are available only through direct
10 sales or authorized distributors and cannot be purchased in stores or otherwise.

11 R. Defendants shall not state or imply (and shall require that Defendants'
12 territory directors, distributors, Joint Ventures and their respective salespeople not state or imply)
13 that a consumer will pay a lower price than regularly charged by such person for any of
14 Defendants' products, unless the statement is true, material and not misleading.

15 S. Defendants shall not state or imply (and shall require that Defendants'
16 territory directors, distributors, Joint Ventures and their respective salespeople not state or imply)
17 that merchandise is offered as a gift when that merchandise is offered only in connection with
18 other purchases whose cost includes that of the purported gift.

19 T. Defendants shall not fail, for the twenty-four (24) months following the
20 stay provided in Paragraph 8(B) of this Judgment, to honor (and shall require that Defendants'
21 territory directors, distributors, Joint Ventures and their respective salespeople not fail to honor) a
22 consumer's request to cancel, whether that request is made orally or in writing, if such request is
23 made within three business days after the date on which the consumer signs an agreement or
24 offer to purchase that complies with Civil Code section 1689.7. Thereafter, Defendants shall not
25 fail to comply (and shall require Defendants' territory directors, distributors, Joint Ventures, and
26 their respective salespeople to comply) with applicable law with respect to cancellations.

27 U. Defendants shall not fail, for the twenty-four (24) months following the
28 stay provided in Paragraph 8(B) of this Judgment, to honor (and shall require that Defendants'

1 territory directors, distributors, Joint Ventures and their respective salespeople not fail to honor) a
2 consumer's request to cancel, whether that request is made orally or in writing, made at any time
3 if it is known, or reasonably should be known, that a violation of applicable law requiring such
4 cancellation or a violation of any of Paragraphs 4(B) or 4(I) through (S) hereof (collectively, the
5 "Cancellation Requirements") has occurred. In the event there is conflicting information
6 regarding whether a violation of the Cancellation Requirements has occurred, the cancellation
7 decision shall be made in good faith on a case by case basis. Thereafter, Defendants' shall not
8 fail to comply (and shall require Defendants' territory directors, distributors, Joint Ventures, and
9 their respective salespeople to comply) with applicable law with respect to cancellations.

10 V. Defendants shall not fail, for the twenty-four (24) months following the
11 stay provided in Paragraph 8(B) of this Judgment, to require that Defendants' territory directors,
12 distributors, Joint Ventures and their respective salespeople not fail to return a consumer's down
13 payment within ten (10) business days after such order was cancelled pursuant to Paragraphs
14 4(T) or 4(U) (the "Initial Ten Day Period"). In the event Defendants know or should know that it
15 was not so returned, Defendants shall not fail to return a consumer's down payment on behalf of
16 the distributor within ten (10) days after the Initial Ten Day Period. Thereafter, Defendants shall
17 comply (and shall require Defendants' territory directors, distributors, Joint Ventures, and their
18 respective salespeople to comply) with applicable law with respect to cancellations.

19 W. Defendants shall not fail to require that, before a consumer signs any
20 document that either states or implies that the consumer has any obligation whatsoever to
21 complete the transaction, or that is presented to the consumer in a manner that creates such an
22 impression, Defendants' territory directors, distributors, Joint Ventures and their respective
23 salespeople shall provide the consumer with a "recap sheet" to be signed by the consumer, which
24 clearly and conspicuously states the consumer's outstanding balance, the applicable annual
25 interest rate, the approximate amount of the consumer's minimum monthly payment, the last date
26 on which the consumer may cancel the contract and a summary of the cancellation process to be
27 followed. Defendants shall also provide Defendants' contact information and directions to
28 contact Defendants with any questions or concerns. Defendants shall require that Defendants'

1 territory directors, distributors, Joint Ventures or their respective salespeople give a completed
2 copy of the recap sheet to the consumer at the time that the consumer signs the agreement or
3 offer to purchase.

4 X. Defendants shall not fail to provide to, or otherwise make available (such
5 as via the Internet or email) to, each of Defendants' territory directors, distributors or Joint
6 Ventures that Defendants know or should reasonably know is engaging in selling or offering for
7 sale Defendants' cookware, other kitchen products or water filters in California a copy of the
8 document in substantially the same form as set forth in Addendum 1 to this Judgment.
9 Addendum 1 shall list injunctive terms of this Judgment and, to the extent they are not
10 inconsistent with the terms of this Judgment, the injunctive provisions of the judgment in *The*
11 *People of the State of California v. Hy Cite Corporation, et al.*, San Francisco Superior Court
12 Case Number 301274, and shall make clear that its requirements are the result of an order of the
13 California Superior Court and that failure to comply subjects each such person to the jurisdiction
14 of that court, and may subject the person to contempt of that court and to civil penalties as
15 provided in Business and Professions Code sections 17207 and 17536.5. Defendants shall either
16 (1) obtain from each territory director, distributor or Joint Venture a signed and notarized
17 acknowledgment that he or she has read, understands and agrees to abide by the terms of
18 Addendum 1 (to the extent it applies to them) and understands that there is a sanctions policy, as
19 described below, for violation of Addendum 1; or, (2) immediately terminate any such person
20 who does not sign and return the acknowledgment. Defendants shall also require that such
21 territory directors, distributors and Joint Ventures not engage a salesperson to sell or offer for
22 sale Defendants' cookware, other kitchen products or water filters in California until such time
23 as the salesperson delivers a signed and notarized acknowledgment to the territory director,
24 distributor or Joint Venture. "Termination" as used in this Paragraph shall mean that Defendants
25 shall refuse to accept an order in which the terminated person was involved in any capacity,
26 whether or not the terminated person is involved in the order as the salesperson, distributor,
27 territory director or Joint Venture. Nothing herein shall prevent Defendants or any territory
28 director, distributor or Joint Venture from reinstating or engaging any such person upon such

1 person's compliance with the applicable provisions hereof. This Paragraph X shall replace and
2 supersede the provisions of the Judgment in *The People of the State of California v. Hy Cite*
3 *Corporation, et al.*, regarding provision of such Judgment and receipt of the related
4 acknowledgment to territory directors, distributors and Joint Ventures, as set forth in Paragraph
5 H thereof.

6 Y. Defendants shall not fail to maintain and to enforce a policy that imposes
7 sanctions on distributors for violations of any of the injunctive provisions of this judgment by the
8 distributor, his or her Joint Ventures and/or his or her salespeople. Such policy shall include
9 termination of distributors for repeated material violations of the judgment by the distributor, his
10 or her Joint Ventures and/or his or her salespeople. "Termination" as used in this Paragraph 4(Y)
11 shall mean that the distributor's status as a territory director, distributor or Joint Venture of
12 Defendants shall be terminated and that Defendants shall use reasonable efforts to ensure that
13 such distributor not be engaged by another distributor as a salesperson. Imposition of any such
14 penalty shall not be deemed an admission of a violation of any provision of this Judgment, the
15 Judgment in *The People of the State of California v. Hy Cite Corporation, et al.*, nor any law by
16 Defendants or any such person on whom such penalty is imposed.

17 5. Pursuant to Business and Professions Code section 17203, Defendants are hereby
18 permanently enjoined and restrained from directly or indirectly offering, or failing to offer, any
19 contract term, credit term, service, right, privilege or advantage of any kind to a consumer, or
20 applying any policy or procedure differently, based on the consumer's actual or perceived sex,
21 race, color, religion, ancestry or national origin. Such terms, services, rights, privileges and
22 advantages include, but are not limited to, the following:

- 23 A. The cancellation of contracts.
- 24 B. The down payment or method of down payment such as acceptance of a
25 post-dated check, or the amount of down payment required.
- 26 C. The deferral of payments on contracts.
- 27 D. The methods of financing purchases, such as the offer of financing to
28 students.

1 E. The documentation required for approval of financing.

2 F. The methods of debt collection.

3 6. Paragraph B(21)(c) of the Judgment in *The People of the State of California v. Hy*
4 *Cite Corporation, et al.*, is replaced and superseded with the following paragraph:

5 (c) The home solicitation contract or offer shall be accompanied by
6 a completed form in duplicate, captioned "Notice of Cancellation."
7 If the Notice of Cancellation is on a separate document, it shall be
8 attached to the agreement or offer to purchase and be easily
9 detachable. The Notice of Cancellation shall be in the same
10 language required by Civil Code section 1689.7, subdivision (c);

11 7. Nothing herein is intended to impose a standard lower than that imposed by law or
12 excuse Defendants from complying with all applicable laws.

13 8. The injunctive provisions of Paragraph 4 of this Judgment are stayed for the
14 following periods from the date this Judgment is entered:

15 A. Paragraphs 4(A), (B), (C), (E), (G), (H), (I), (L), (M), (N), (O), (P), (Q),
16 (R), (S) and (T) for five (5) days;

17 B. Paragraphs 4(D), (F), (K), (U), (V), (W), (X) and (Y) for forty-five (45)
18 days;

19 C. Paragraph 4(J) for five (5) days, except as applicable to Defendants'
20 product packaging and other written materials delivered post-sale, for which Paragraph 4(J) shall
21 be stayed for 180 days following the date this Judgment is entered.

22 MONITORING AND DOCUMENT RETENTION

23 9. To ensure compliance with the Judgment, Defendants, for the first thirty-six (36)
24 months only following the stay provided in Paragraph 8(B) of this Judgment, shall retain an
25 independent compliance monitor located in California. Subject to contractual defenses available
26 under California law, Defendants shall pay the monitor the actual cost of monitoring not to
27 exceed the sum of \$150,000.00 for the first year, and \$100,000.00 for each of the two following
28 years, for a total of monitoring costs not to exceed \$350,000.00 in aggregate. Defendants may
suggest persons or entities to serve as the monitor, but the Attorney General shall determine who
will serve as the monitor. The monitor will operate at the exclusive direction of the Attorney

1 General. If Defendants withhold payment from the monitor pursuant to California contract law,
2 Defendants shall pay the withheld funds to the Attorney General, who shall hold the funds
3 pending resolution of the dispute, and the monitoring period will be extended on a day-to-day
4 basis for any period in which no monitoring takes place as a result of such dispute.

5 10. The monitor shall contact Defendants and California consumers in order to gather
6 information that will assist the Attorney General in determining whether Defendants,
7 Defendants' territory directors, distributors and Joint Ventures and their respective salespeople
8 selling Defendants' cookware, other kitchen products or water filters in California have complied
9 with the provisions of this Judgment. The Attorney General may select the consumers to be
10 contacted or may delegate that authority to the monitor. The specific tasks to be undertaken by
11 the compliance monitor shall be set forth more fully in an agreement to be entered into by
12 Defendants and the compliance monitor, subject to the approval of the Attorney General.

13 11. To facilitate the monitor's activities Defendants, at their expense, shall provide to
14 the monitor, for each Monday-Sunday week following the end of the stay provided in Paragraph
15 8(B) (the "Reporting Week"), in an electronic format, no later than the Monday eight (8) days
16 after the end of the Reporting Week in question, the following information (to the extent
17 possessed by Defendants) regarding each California consumer who purchased any cookware,
18 kitchen products or water filters and for whom Hy Cite processed a sales order during the
19 Reporting Week:

20 A. The full name and last known address, telephone number, and e-mail
21 address (if known) of the consumer.

22 B. A copy of the front page of the consumer's contract, credit agreement (if
23 any) and recap sheet.

24 C. The full name and last known address, telephone number, and e-mail
25 address of the territory director, distributor or Joint Venture who sold or engaged the person who
26 sold the product.

27 D. All other information requested by the Attorney General to monitor
28 compliance with the provisions of this Judgment. By agreement between Plaintiff and

1 Defendants, the frequency of the production of documents and the scope of production may be
2 reduced.

3 12. The monitor shall provide written monthly reports to the Attorney General.
4 Unless the Attorney General determines that disclosure of the written reports to Defendants will
5 interfere with the Attorney General's ability to enforce the Judgment, the Attorney General shall
6 provide copies of the written reports to Defendants within thirty (30) days of receipt by the
7 Attorney General. The reports shall be considered Defendants' trade secrets and shall be kept
8 confidential by the Attorney General except as needed to enforce compliance with the Judgment.

9 13. Defendants shall, for the first twenty-four (24) months following the stay provided
10 in Paragraph 8(B) of this Judgment, provide the Attorney General with copies of all written
11 complaints from California customers received by Defendants alleging improper sales or
12 financing practices regarding cookware, other kitchen products or water filters. Copies of the
13 complaints received through the 15th day of the prior month shall be provided to the Attorney
14 General on the 1st day of the following month.

15 14. Defendants shall retain (and shall require that Defendants' territory directors,
16 distributors, Joint Ventures and their respective salespersons retain (except to the extent provided
17 to Defendants)) all contracts, recap sheets and regularly maintained customer call logs
18 concerning any sale to a California consumer of cookware, other kitchen products or water filters
19 for a period of forty-eight (48) months after the date of the consumer's final payment in
20 connection with that sale.

21 15. For purposes of further insuring compliance with this judgment, any duly
22 authorized representative of the California Attorney General shall, upon reasonable notice to
23 Defendants, be permitted to inspect and copy all books, ledgers, correspondence, memoranda,
24 contracts, or other similar records or documents in the possession of or under the control of
25 Defendants, which relate to any of the matters contained in this Judgment.

26 16. Nothing in this Judgment limits the rights of the Attorney General to request or
27 obtain information from, or otherwise contact, Defendants, Defendants' territory directors
28

1 distributors, Joint Ventures, their respective salespeople, or their consumers, as otherwise
2 provided in this Judgment or as provided by law.

3 MONETARY PROVISIONS

4 17. Upon entry of this Judgment, pursuant to California Business and Professions
5 Code sections 17203 and 17535, Defendants shall jointly and severally pay to Plaintiff restitution
6 in the amount of \$350,000.00 in aggregate. Plaintiff, in its discretion, may determine the
7 eligibility of any individual for restitution available under this Judgment, pay restitution directly
8 to eligible individuals in accordance with any reasonable plan or method, including restitution to
9 all eligible individuals, or to groups of eligible individuals reasonably selected by Plaintiff in its
10 discretion, on a full, *pro rata*, or differential basis, and distribute any remaining restitution as
11 additional civil penalties after payment of restitution as set forth in this paragraph. At Plaintiff's
12 option, restitution may be administered by a third party administrator, who shall administer
13 restitution according to this Judgment. Payment for services rendered by the restitution
14 administrator shall be paid entirely and solely from funds allocated as restitution. Defendants
15 shall make a good faith effort to cooperate with Plaintiff in determining which consumers are
16 entitled to restitution. In connection with this restitution program, within thirty days of notice
17 from Plaintiff identifying eligible consumers, Defendants shall notify each credit reporting
18 agency to whom it sent a negative report concerning each such consumer rescinding Defendants'
19 negative report and shall send a copy of each such letter to the consumer and to Plaintiff.

20 18. Upon entry of this Judgment, Defendants shall jointly and severally pay to
21 Plaintiff the sum of \$150,000.00 in aggregate as partial payment of attorney fees and costs related
22 to the investigation and the prosecution of this matter, which it shall distribute as follows:

23 A. To the California Attorney General's office, attorney fees and costs of
24 \$75,000.00.

25 B. To the Los Angeles County Department of Consumer Affairs,
26 investigative costs of \$75,000.00.

27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

1 **PROOF OF SERVICE**

2 **RE: People of the State of California v. Hy Cite Corporation, et al.**

3 **Case No.: BC 396 948**

4 **I, Leticia Silva, declare:**

5 I am employed in the City of Los Angeles, County of Los Angeles, State of California. I am
6 over the age of 18 years and not a party to the within action. My business address is 300 S. Spring
7 Street, 5th Floor, Los Angeles, California 90013. On August 26, 2008, I served the documents named
8 below on the parties in this action as follows:

8 **DOCUMENT SERVED: FINAL JUDGMENT AND PERMANENT INJUNCTION**

9 **SERVED UPON:** Martin S. Schenker
10 Cooley Godward Kronish LLP
11 101 California Street, 5th Floor
12 San Francisco, CA 94111-5800

12 **XX BY MAIL:** I caused each such envelope, with postage thereon fully prepaid, to be placed
13 in the United States mail at Los Angeles, California. I am readily familiar with the practice
14 of the Office of the Attorney General for collection and processing of correspondence for
15 mailing, said practice being that in the ordinary course of business, mail is deposited in the
16 United States Postal Service the same day as it is placed for collection.

15 I hereby certify that I am employed in the office of a member of the Bar of this Court at
16 whose direction the service was made.

17 **BY OVERNIGHT MAIL:** I am readily familiar with the practice of the Office of the
18 Attorney General for collection and processing of correspondence for overnight delivery and
19 know that the document(s) described herein will be deposited in a box or other facility
20 regularly maintained by Federal Express ("FedEx") for overnight delivery.

19 **BY FACSIMILE:** I caused to be transmitted the document(s) described herein via the
20 following facsimile number:

21 I declare under penalty of perjury under the laws of the State of California that the above is
22 true and correct. Executed on August 26, 2008, at Los Angeles, California.

23 Leticia Silva

24 Typed Name

23  Signature